

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DANELL L. PRATT,  
Petitioner,

v.

SAN QUENTIN STATE PRISON  
WARDEN,  
Respondent.

No. C 09-4005 MHP (pr)

**ORDER TO STAY PROCEEDINGS  
AND ADMINISTRATIVELY CLOSE  
CASE**

Petitioner has moved for a stay and abeyance of this action so that he may exhaust state court remedies for some claims in addition to those already briefed that he wishes to present to this court for federal habeas review. Respondent has not opposed the stay. Upon due consideration, the court GRANTS petitioner's motion to stay and hold these proceedings in abeyance. (Docket # 13.) Liberally construed, the pro se motion satisfies the criteria for permitting a stay identified in Rhines v. Weber, 544 U.S. 269, 277-78 (2005).

Petitioner states that he did not intend to start his federal habeas action when he filed his federal habeas petition but instead was attempting to petition for writ of certiorari and inadvertently sent his filing to this court instead of the U.S. Supreme Court. Although it is not clear why he wants to petition the U.S. Supreme Court for writ of certiorari – as filing such a petition is not necessary to exhaust state court remedies – such a course of action is not impermissible. He also may have additional claims that he wants to present to state court before proceeding with this action. With this action stayed, he will be able to attempt to pursue his desired course of action.

1 This action is now STAYED and the clerk shall ADMINISTRATIVELY CLOSE the  
2 action. Nothing further will take place in this action until petitioner exhausts any  
3 unexhausted claims and, within thirty days of doing so, moves to reopen this action, lift the  
4 court's stay and amend his petition to add his new claims. Petitioner must act diligently to  
5 get his state court petition filed and promptly return to federal court after his state court  
6 proceedings have concluded. See id.; Kelly v. Small, 315 F.3d 1063, 1071 (9th Cir. 2003).

7 IT IS SO ORDERED.

8 DATED: January 7, 2011

  
Marilyn Hall Patel  
United States District Judge